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Resolution adopted by the Human Rights Council on 27 September 2018

39/5. The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

The Human Rights Council,

Recalling all previous resolutions adopted by the General Assembly, the Human Rights Council and the Commission on Human Rights on the subject, including Assembly resolution 64/151 of 18 December 2009 and Council resolutions 10/11 of 26 March 2009, 15/12 of 30 September 2010, 15/26 of 1 October 2010, 18/4 of 29 September 2011, 24/13 of 26 September 2013, 27/10 of 25 September 2014, 30/6 of 1 October 2015, 33/4 of 29 September 2016 and 36/3 of 28 September 2017,

Recalling also all relevant resolutions that, inter alia, condemn any State that permits or tolerates the recruitment, financing, training, assembly, transit or use of mercenaries with the objective of overthrowing the Governments of States Members of the United Nations, especially those of developing countries, or of fighting against national liberation movements, and recalling further relevant resolutions and international instruments adopted by the General Assembly, the Security Council, the Economic and Social Council, the African Union and the Organization of African Unity, inter alia, the Organization of African Unity Convention for the Elimination of Mercenarism in Africa,

Reaffirming the purposes and principles enshrined in the Charter of the United Nations concerning the strict observance of the principles of sovereign equality, political independence, the territorial integrity of States, the self-determination of peoples, the non-use of force or threat of use of force in international relations and non-interference in affairs within the domestic jurisdiction of States,

Reaffirming also that, by virtue of the principle of self-determination, all peoples have the right to determine freely their political status and to pursue freely their economic, social and cultural development, and that every State has the duty to respect this right in accordance with the provisions of the Charter,

Reaffirming further the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Extremely alarmed and concerned about the threat posed by the activities of mercenaries to peace and security in developing countries in various parts of the world, in

particular in areas of conflict, and about the threat they pose to the integrity of and respect for the constitutional order of the countries affected,

Deeply concerned at the loss of life, the substantial damage to property and the negative effects on the policies and economies of affected countries resulting from international criminal mercenary activities,

Convinced that, regardless of the way in which mercenaries or mercenary-related activities are used or the form that they take to acquire a semblance of legitimacy, they are a threat to peace, security and the self-determination of peoples and an obstacle to the enjoyment of human rights by peoples,

1. *Reaffirms* that the use of mercenaries, and their recruitment, financing, protection and training, are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations;

2. *Recognizes* that armed conflicts, terrorism, arms trafficking and covert operations by third Powers encourage, inter alia, the demand for mercenaries and for private military and security companies on the global market;

3. *Urges once again* all States to take the necessary steps and to exercise the utmost vigilance against the threat posed by the activities of mercenaries, and to take legislative measures to ensure that their territories and other territories under their control, and their nationals, are not used for the recruitment, assembly, financing, training, protection and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State or to dismember or to impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination;

4. *Requests* all States to exercise the utmost vigilance against any kind of recruitment, training, hiring or financing of mercenaries;

5. *Also requests* all States to exercise the utmost vigilance in banning the use of private companies offering international military consultancy and security services when intervening in armed conflicts or actions to destabilize constitutional regimes;

6. *Encourages* States that import the consultancy and security services provided by private companies, including in the extractive industries, to establish national regulatory mechanisms for the registering and licensing of those companies, for accountability of the companies and their personnel and for remedies for violations resulting from their activities in order to ensure that imported services provided by those private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country;

7. *Calls upon* all States that have not yet become a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries to consider taking the necessary action to do so;

8. *Welcomes* the cooperation extended by those countries that were visited by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, and the adoption by some States of national legislation that restricts the recruitment, assembly, financing, training and transit of mercenaries;

9. *Condemns* mercenary activities in developing countries in various parts of the world, in particular in areas of conflict, and the threat they pose to the integrity of and to respect for the constitutional order of those countries and to the exercise of the right to self-determination of their peoples, and stresses the importance for the Working Group of looking into sources and root causes, and into the political motivations of mercenaries and for mercenary-related activities;

10. *Calls upon* States to investigate the possibility of mercenary and mercenary-related involvement whenever and wherever criminal acts of a terrorist nature occur and to bring to trial those found responsible or to consider their extradition, if so requested, in accordance with national law and applicable bilateral or international treaties;

11. *Recognizes* that mercenary activity is a complex crime in which criminal responsibility falls upon those who have recruited, employed, trained and financed the mercenary or mercenaries, and upon those who have planned and ordered their criminal activity;

12. *Condemns* any form of impunity granted to perpetrators of mercenary activities and to those responsible for the use, recruitment, financing and training of mercenaries, and urges all States, in accordance with their obligations under international law, to bring them, without distinction, to justice;

13. *Calls upon* the international community and all States, in accordance with their obligations under international law, to cooperate with and assist the judicial prosecution of those accused of mercenary activities in transparent, open and fair trials;

14. *Acknowledges with appreciation* the work and contributions of the Working Group, including its research activities, and takes note of its most recent report;[1]

15. *Requests* the Working Group and other experts to continue their participation, including by submitting contributions, in other subsidiary bodies of the Human Rights Council considering issues related to the use of mercenaries and mercenary-related activities in all their forms and manifestations, including private military and security companies;

16. *Requests* the Working Group to continue the work already carried out by previous mandate holders on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of the term "mercenary" drafted by the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination in his report submitted to the Commission on Human Rights at its sixtieth session,[2] and also the evolving phenomenon of mercenaries and its related forms;

17. *Also requests* in this regard the Working Group to continue to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world, including instances of protection provided by Governments to individuals involved in mercenary activities, and to continue to update the database of individuals convicted of mercenary activities;

18. *Further requests* the Working Group to continue to study and identify new sources and causes, emerging issues, manifestations and trends with regard to mercenaries and mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination;

19. *Urges* all States to cooperate fully with the Working Group in the fulfilment of its mandate;

20. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide the Working Group with all the assistance and support necessary for the fulfilment of its mandate, both professional and financial, including by promoting cooperation between the Working Group and other components of the United Nations system that deal with countering mercenary-related activities, in order to meet the demands of its current and future activities;

21. *Requests* the Working Group to consult States, intergovernmental and non-governmental organizations and other relevant civil society actors in the implementation of the present resolution, and to report its findings on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination to the General Assembly at its seventy-fourth session and to the Human Rights Council at its forty-second session;

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[1] A/HRC/39/49.

[2] E/CN.4/2004/15.

22. *Decides* to continue its consideration of this matter under the same agenda item at its forty-second session.

39th meeting
27 September 2018

[Adopted by a recorded vote of 30 to 15, with 2 abstentions. The voting was as follows:

In favour:

Angola, Brazil, Burundi, Chile, China, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Ecuador, Egypt, Ethiopia, Iraq. Kenya, Kyrgyzstan, Mongolia, Nepal, Nigeria, Pakistan, Panama, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, South Africa, Togo, Tunisia, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

Australia, Belgium, Croatia, Georgia, Germany, Hungary, Iceland, Japan, Republic of Korea, Slovakia, Slovenia, Spain, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland

Abstaining:

Afghanistan, Mexico]